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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|--------------------------|---------------------|------------------|
| 10/772,046 | 02/04/2004 | Thomas W. Schrimsher SR. | 228-002.001 Shrock | 3921 |
| 31179 | 7590 | 11/03/2005 | EXAMINER | |
| JAMES D. HALL BOTKIN & HALL, LLP 105 E. JEFFERSON BLVD. SUITE 400 SOUTH BEND, IN 46601 | | | EDELL, JOSEPH F | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3636 | |

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|-----------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/772,046 | SCHRIMSHER, THOMAS W. | |
| | Examiner | Art Unit | |
| | Joseph F. Edell | 3636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 August 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-17 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 05 August 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 05 August 2005. These drawings are acceptable.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,163,900 to Stevenson in view of U.S. Patent No. 3,675,965 to Burdett.

Stevenson discloses a seating that is basically the same as that recited in claims 12-16 except that the seating lacks an actuating link, as recited in the claims. See Figures 1-10 of Stevenson for the teaching that the seating has a seat frame (Fig. 2), a back frame (Fig. 2) wherein each seat frame and back frame being movable relative to one another between a seating portion (Fig. 6) in which the seat frame is horizontal and the back frame is inclined with respect to the seat frame and a flat horizontal auxiliary position (Fig. 4) in which the seat frame and the back frame are flush and movable from an active horizontal position (Fig. 4) to a storage position (Fig. 3) in which the seat

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frame and the back frame are vertical along a wall (Fig. 3), and a supporting means (Fig. 4) with an immovable portion 70 (Fig. 4) and a movable portion (Fig. 2) supporting the frames and connected to the immovable portion through a pivot connection (Fig. 4) for movement between the active and storage positions wherein the supporting means is *capable* of pivotal connection to the wall and movement between the seating position, the auxiliary position, and the storage position, and a leg 60 (Fig. 6) of the supporting means that is movable between a supporting position projecting from the frames and supporting the frame and a non-supporting folded position. Burdett shows a seating similar to that of Stevenson wherein frames 22,24 (Fig. 2) have a supporting means (Fig. 2) with legs 44 (Fig. 2), an actuating link 46 (Fig. 2) that is a rigid member pivotally connected to the supporting means and the leg between opposite ends thereof, a movable portion (Fig. 2) mounted to the frames, and an immovable portion (Fig. 2) connected to the rigid member wherein the actuating link is *capable* of connection at a wall (Fig. 2) for moving the leg between a supporting position (Fig. 2) and a folded position (Fig. 3) tucked along the frames as the frames are moved from an active position (Fig. 2) to a storage position (Fig. 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seating of Stevenson such that the frames have an actuating link that is a rigid member pivotally connected to the supporting member and the leg at opposite ends thereof, the immovable portion of the supporting means is pivotally connected to the rigid member wherein the actuating link is *capable* of connection at the wall for moving the leg between the supporting position and the folded position tucked along the frames as the

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frames are moved from the active position to the storage position, such as the seating disclosed in Burdett. One would have been motivated to make such a modification in view of the suggestion in Burdett that the actuating link of the frames automatically swings the legs from the active position to the storage position and vice versa.

4. Claims 1-11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevenson in view of Burdett as applied to claims 12-16 above, and further in view of U.S. Patent No. 5,553,920 to Meschkat et al.

Stevenson, as modified, discloses a seating that is basically the same as that recited in claims 1-11 and 17 except that seat frame is not slidably mounted on the movable portion and lacks pivotal connection to a main supporting member, as recited in the claims. See Figures 1-6 of Stevenson for the teaching that the back frame is slidably mounted on the movable portion and flush with the seat frame when in the auxiliary position wherein the seat frame and back frame connected to a main supporting member (Fig. 2) and the back frame is movable relative to the main supporting member toward and away from the wall between the seating position and the auxiliary position that permits the main supporting member to be moved into the storage position, and a linkage means 38 (Fig. 6) connects the back frame to the main supporting member for pivotal movement with respect to the main supporting member. Meschkat et al. show a seating similar to that of Stevenson wherein the seating has a main supporting member 1 (Fig. 8), a back 120 (Fig. 8), a seating frame 10,110 (Fig. 8) slidable mounted on the main supporting member to be movable forward and backward relative to the main supporting member, and a linkage means 5 (Fig. 8) connecting the

seating frame to the main supporting member for pivotal movement relative to the main supporting member. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seating of Stevenson such that the seat frame is slidably mounted on the main supporting member and movable relative to the main supporting member toward and away from the wall between the seating position and the auxiliary position, and the seat frame is pivotally mounted relative to the main supporting member via the linkage means, such as the seating disclosed in Meschkat et al. One would have been motivated to make such a modification in view of the suggestion in Meschkat et al. that a seat frame that may be longitudinally and angularly adjustable to the specific needs of the user's physique to prevent the onset of fatigue and to relax the user.

Response to Arguments

5. Applicant's arguments filed 05 August 2005 have been fully considered but they are not persuasive. Applicant argues that Stevenson fails to disclose a seating having a seat frame and a back frame being movable relative to one another, as recited in claim 11. However, Stevenson shows a seating having a seat frame of the seating portion 22 (see Figs. 3-6) that is movable around the bracket 70 and a back frame of the seating portion 24 that is movable around the bracket 70 and around arms 44,46. Therefore, Stevenson teaches the limitation of claim 11 reciting that each of the seat frame and the back frame being movable relative to one another. Also, see Figures 3 and 4 for the

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teaching that the both the seat frame and back frame are pivotably mounted on the movable portion of the supporting means, as recited in claim 15.

Next, Applicant argues that it would not be obvious to substitute the linkage system of Burdett for the linkage system of Stevenson because the linkage system of Burdett is overly complicated and would be incompatible with the arm linkage system of Stevenson. However, one of ordinary skill would be motivated to modify the seating of Stevenson such that the manually pivoting legs 60 (Fig. 4) include an automatic adjusting link, as taught in Burdett. The adjusting link of the legs would not impede the arm linkage system of Stevenson from adjusting between the horizontal sleeping position (Fig. 4) and the seating position (Fig. 6). See the above rejection for motivation to modify teachings of Stevenson in view of Burdett.

Lastly, Applicant argues that it would not be obvious to modify the seating of Stevenson such that the seat frame has sliding movement because the seat portion 22 would be hindered from sliding while in the bed position. While Examiner agree there would be little use for a sliding movement of the seat portion 22 while in the bed position, it would have been obvious to one of ordinary skill to modify the frame of Stevenson such that the seat portion has sliding movement while in the seating position such that the seating may accommodate users of different heights.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

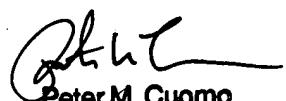
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JE
October 31, 2005


Peter M. Cuomo
Supervisory Patent Examiner
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